K
50
A1B193g


AA
0006286538

THE LIBRARY
OF
THE UNIVERSITY
OF CALIFORNIA
LOS ANGELES

The Growth of Law During the Past Year

Annual Address Delivered Before the Bureau of Comparative Law of the American Bar Association

Boston, September 3, 1919

By

SIMEON E. BALDWIN

Director of the Bureau

Digitized by the Internet Archive
in 2008 with funding from
Microsoft Corporation

http://www.archive.org/details/growthoflawdurin00bald

ANNUAL ADDRESS.

BY

SIMEON E. BALDWIN,

OF CONNECTICUT.

DIRECTOR OF THE BUREAU OF COMPARATIVE LAW.

THE GROWTH OF LAW DURING THE PAST YEAR.

Law is always changing its dress. It puts on some new things and drops some old ones. Generally it puts on more than it takes off. In some years it puts on less than it takes off. This has been such a year.

An Era of Repeal.

Coming late into the world war, the United States found the other great powers already equipped with such laws and decrees as they thought fittest for their protection. It followed where they led, and in some instances went farther than most of them. Since the armistice of November, 1918, the course of legislation has run, with accumulating rapidity, towards statutes and decrees of repeal.

I say "decrees," because there have been many, proceeding from the President, or from executive boards constituted by authority of the United States for purposes incident to the war, or from state governments, which without bearing the name of statutes, have been, within their proper field, of equal force, under the principle that public danger may warrant the substitution of executive process for judicial process.[1]

Foreign Commerce.

The President has now either revoked or softened a large part of his prohibitory orders, issued on our coming into the war, which affected commercial intercourse with foreign countries of various kinds.

[1] Moyer *vs.* Peabody, 212 U. S., 78, 85.

1019879

The new policy of Congress as to encouraging foreign trade is in striking contrast to the views of which the Sherman Act was an expression. Not only is the formation of export trade associations freely permitted, but their business can be carried on under an agreement that no member can sell for export except through it or by its leave. Several enormous combinations of this character have already been formed.

The government also has gone into foreign trade directly on its own account, and organized a War Finance corporation with a capital supplied by the United States of $500,000,000. The United States is the sole stockholder.

It has sought the aid of the states in incorporating some of its official agencies. A majority of the members of the "War Trade Board" obtained incorporation in 1918, under the name of the "War Trade Board of the United States, Russian Bureau, Incorporated," under the general incorporation laws of Connecticut. The authorized capital was $5,000,000. Each signer of the articles of association subscribed for one share, and the chairman also subscribed for 49,990 shares as "Chairman of the War Trade Board." The incorporation is in perpetuity and the capital was supplied by the President of the United States out of the hundred million dollar appropriation to be expended by him for national security and defence. The "certificate of incorporation" describes its purposes as embracing, among other things, carrying on a general mercantile and commercial business in any part of the world; engaging in all kinds of manufacturing; and building, buying, and operating railways, telephone and telegraph systems, gas and electric light companies; canals and irrigation systems; shipping and warehouses; and engaging in banking; all in any part of the world outside of the State of Connecticut.

A considerable business has already been transacted by this board in making exports to Russia.

Procuring such a charter for such objects is one of the tokens of the closer union of state and national activities accomplished by the great world war. To get a perpetual grant of such privileges from Congress, if possible at all, would have been likely to take months of effort. Under the American principles of freedom of incorporation, as administered in the states, it was, or might have been, an affair of a few hours.

The Paris Peace Conference.

A serious attempt has been made during the last few months, by an international conference at Paris, to shape a scheme for world government as respects many of the international relations which are of the highest importance.

The conference has been so organized as to leave the main control of its proceedings with the great Powers, exclusive of Russia. In the Rules of the Conference they are named (the United States, the British Empire, France, Italy and Japan) and described as "the belligerent Powers with general interests." Most of the other belligerent powers are described as having "special interests." Neutral powers and states in process of formation are only to be heard as to matters directly affecting them, and then only if summoned in by the powers with general interests.[2]

The treaty of peace with Germany, which they have prepared, embodies a detailed Constitution for a League of Nations. This has already been ratified by several of the great Powers, and has been treated by the Conference and in the treaty with Poland of last summer (Art. XIII) as now in force as respects certain matters of large importance. As completed by that body it made, as submitted to our Senate, a volume of about 200 pages. Built up, as it necessarily must have been, on a series of compromises, it was inevitable that such a document must contain some provisions obscurely worded.

The so-styled "Supreme Council" of the great Powers, which is for the time being the voice of the Conference, decided on July 29, to appoint a permanent commission, to co-ordinate and interpret it. This commission is to be comprised of five members, each representing one of the great Powers, and it is not expected to sit until the treaty shall have gone into full effect.

International Tribunals.

No provision whatever is made by the treaty for the creation of any international court, excepting the special tribunal for trying the former Kaiser (Art. 227), and the mixed Arbitral Tribunal (Art. 304, *et seq.*), which is essentially an administrative bureau. It contemplates, however, the future creation of a "Per-

[2] Am. Journal of International Law, Supplement, XIII.

manent Court of International Justice" (Art. 426) as a part of the plan for organizing an international control over labor. Whether the "Permanent Court of Arbitration," set up by the Hague Conference of 1899 and 1907, is to be replaced by such a "Permanent Court of International Justice," or whether the two tribunals may both be in operation at the same time is not indicated by the terms of the treaty. The constituents of each are at present not the same. The Hague Tribunal represents all nations that were parties to the Hague Convention of 1907. Any new court, organized under a new treaty, would represent only the powers adhering to the treaty of peace of 1919. Delicate questions are evidently here presented for adjustment.

A treaty between Brazil and Uruguay, framed on the principle of general obligatory arbitration, was concluded December 27, 1916, and promulgated on June 27, 1918.[3]

Every dispute which cannot be settled by diplomatic means is to be referred to an arbiter, who must be a chief of state, the president of a superior court or tribunal of justice, or a person generally regarded as specially conversant with the subject of dispute. In case of a failure to agree on the arbiter the controversy shall be submitted to the Permanent Court of Arbitration at the Hague.

A treaty of the same general character was negotiated in 1916 between Spain and the Argentine Republic.

The arbitration tribunal is to consist of three persons, one appointed by each power, and those two to select an umpire. Preferably all are to be taken from the list of members of the Hague tribunal, and the umpire must be.

The so-called "Bryan treaties" generally recognized the Permanent Court of Arbitration at the Hague as an appropriate tribunal for proceedings under them.

It would seem to be safe to assume that the absence of any attempt in the pending scheme of a League of Nations to set up a new court of arbitration indicates an intention to recognize that of the Hague as for the present continuing in existence, and open to all the world, as before.

The advantages of the Central American Court of Justice, which was abandoned after ten years trial in 1918, are becoming

[3] Am. Bar Association Journal, V, 216.

[4] *Ibid.*, 299.

more obvious in view of recent occurrences. Several unsuccessful attempts to put all the Central American Powers on a peace footing followed, the last having been in July, 1919, when Salvador proposed to Guatemala, Honduras and Nicaragua that the four republics should take mutual friendly action towards securing the domestic peace of Costa Rica, and normalizing international affairs in Central America.

It is to be hoped that something in this direction may be in fact accomplished by the good offices of the Second Pan-American Financial Conference, which meets at Washington on January 12, 1920.

Aerial Navigation.

The agreements reached by the Peace Conference have been largely bottomed on the reports of special commissions of experts which it appointed from time to time. One of them was the "Aeronautic Commission," which grew out of a call by France, in March, 1919, of an international Conference on Aerial Navigation. This commission sent in a draft convention relative to Aerial Navigation (Treaty of Peace, Art. 319), which was adopted and signed by all the great Powers excepting the United States.

It recognizes the sovereignty of each nation over the air above its territory, but on terms of allowing its use by other countries or their citizens in a reasonable manner.

The minimum age for pilots and navigators is nineteen. No one can be an aeronaut without a license, based on a special examination, and there must be a re-examination every six months. Any state, party to the convention, can increase the requirements, but cannot reduce them.

Special Standing Commissions.

Special standing commissions to consider proper subjects of international agreements, or administer remedies of an international character, have been greatly multiplied by the war.

There are now some 60 of these bodies with which the United States has relations of more or less importance, and our Department of State is considering the establishment of a new bureau to have general charge of foreign intercourse through such organizations, so far as they fall within the jurisdiction of the United States.

ALIENS.

The rule that a suit may be brought and, so far as necessary to do justice, maintained here against an alien enemy, and even by one, has been reaffirmed by the Supreme Court of the United States.[5]

In the Casdagli case, the House of Lords has decided that in countries where foreigners are protected by extraterritorial authority which may be exercised through consular jurisdiction, a domicil of choice may be acquired by residence and intention, just as freely as in countries where foreigners are not subject to extraterritorial privileges.[6]

The Immigration Act of 1917 was amended in important particulars by an Act of October 16, 1918. It now provides for the deportation of "aliens who are anarchists; aliens who believe in or advocate the overthrow by force or violence of the Government of the United States or of all forms of law; aliens who disbelieve in or are opposed to all organized government; aliens who advocate or teach the assassination of public officials; aliens who advocate or teach the unlawful destruction of property; aliens who are members of or affiliated with any organization that entertains a belief in, teaches, or advocates the overthrow by force or violence of the government of the United States or of all forms of law, or that entertains or teaches disbelief in or opposition to all organized government, or that advocates the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or that advocates or teaches the unlawful destruction of property."

Reference was made in the annual address before the Bureau, last year, to the partial suspension of regulations governing immigration, by the issue of what are called "war emergency labor permits." The Department of Labor has announced that no more will be granted, and that those already existing will become void on January 15, 1920.

[5] Watts, Watts & Co. *vs.* Unione Austrica, 248 U. S., 21.
[6] Casdagli *vs.* Casdagli, 87 L. J. P., 49.

In Peterson *vs.* Iowa, 245 U. S., 170, it was held the treaty between Denmark and the United States, as to discrimination in taxes, did not affect the right of one of our states to impose a higher tax on Danes to whom property within its territory came by its laws than that paid by its own citizens under similar circumstances.

The Force of International Law.

As the smoke of battle clears away, we are beginning to see more clearly that the last five years have left international law stronger than ever. In every civilized country it is recognized as a rule of decision, even when that rule has been disregarded in its official action.

I will not weary you by quoting, in illustration of this, from judgments of the courts to which, in previous addresses on occasions like this, the attention of the bureau has been called: such as the *Zamora,* in England, and the steamship *Appam,* in the United States.[7]

The foundations of the Law of Nations are too deeply laid in the very heart of civilization to be overthrown, even in a war involving half of the world.

The obligations which it imposes may be regarded as flowing, in part at least, from the doctrine of estoppel. Every nation which accepts international law as a governing force in respect to international relations, impliedly agrees with other nations to continue to recognize that force until notice to the contrary is given; and notice in advance. It is thus a case of *estoppel in pais.*

The project for a League of Nations forming part of the treaty of peace with Germany is silent as to questions of further definitions or rules of international law.

In view of this, the Executive Council of the American Society of International Law, in March, 1919, adopted a vote urging the Paris Conference to provide for a general conference of the Powers to meet within the next five years, not earlier than 1921 to review the condition of international law, and state it in authoritative forms.

[7] 243 U. S., 124.

The German Attitude Towards International Law.

The Constituent German National Assembly, which was opened in February, 1919, will, under the new Constitution which it has framed, succeed to the powers of the *Reichstag,* but preserve its present name.

In August, 1919, it inserted in the draft of the Constitution a provision that the generally accepted rules of international law shall be a basic part of German law.

The Constitution as adopted contains these provisions:

The President shall be chosen by direct popular vote on the basis of universal suffrage. His term is seven years.

The legislative powers of the several states are greatly curtailed.

In the Imperial Council each state will have at least one vote, but in no case more than two-fifths of the total number that may be cast by all. Prussia thus loses her predominance.

State courts, to try those accused of political crimes, will be created by an imperial law.

No German can accept a title or decoration from a foreign government.

All men and women have equal rights, and no special privilege can be recognized based on birth or social status; but existing ranks of nobility are not abolished.

All citizens of Germany are to have complete freedom as to religion. No state church is to exist.

Private schools for children cannot be set up without leave of the government. In all schools efforts are to be made to educate their students in the spirit of the German people and of reconciliation with the peoples of the world.

The Espionage and Draft Acts.

The Supreme Court of the United States have affirmed the validity of the Espionage Act as amended in 1917. Nearly a thousand prosecutions have been instituted under it, about a third of which resulted in convictions.

Under the Selective Draft Act about 12,000 prosecutions were instituted, and over 8000 convictions obtained.[8]

[8] This Act was held valid by the Supreme Court in the Selective Draft Law Cases, 245 U. S., 366.

The war found us with treaties made with various powers stipulating that their citizens, residing here, should not be liable to be drafted into compulsory military service. Some of them were in fact drafted under the Selective Draft Act.

The annual report of the attorney-general contains this paragraph in reference to the legal question:

"May the subject of a neutral country be drafted into the military service when the treaty between his country and this country provides to the contrary? Our courts have unanimously held that the Selective Service Act supplants all previously existing conflicting treaty provisions on the subject."

A decision of the District Court has been made to this effect, in regard to our treaty with Spain[9] and the doctrine that the later of two inconsistent laws emanating from the same sovereign controls in his courts is well settled. That we have broken our bargain with Spain cannot affect the legal situation in American courts, however it may involve our national good faith.

The states are following in the same lines, in support of their right of conscription. Maine, this year, made her citizens liable to draft for the militia of the state, that is, the national guard, whenever there are not men enough in the guard to fulfil the requirements of the Act of Congress respecting allowances from the United States towards its support.

The Protection of Equal Laws.

The tendency is growing stronger every year to give a liberal construction to the personal guarantees of the fourteenth amendment to the Constitution of the United States.

A statute of Iowa, making it a misdemeanor for an employee of a hotel or barber to accept a tip, has been held unconstitutional, on the ground that as the employers were left free to accept tips, the employees did not receive the equal protection of the law.[10]

A Kentucky statute has been declared void, which provided that none of the taxes raised from the property of a white person or corporation shall be used for the support of colored common schools, and that the taxes raised from property of colored persons shall not be used for the support of white schools.

[9] *Ex parte* Larrucea, 249 Fed. Rep., 981.

[10] Dunahoo *vs.* Huber, 171 Northwestern Rep., 123.

It was held that the attempt to assign all taxes upon corporations to white schools was violative of the "equal protection" clause of the State Constitution.

Intoxicating Liquors.

A War Time Prohibition Act, styled a Food Conservation Act, which was approved by the President a few days after the armistice (November 21, 1918) went into effect on July 1, 1919. It forbids the manufacture or sale of intoxicating liquors for beverage purposes after that date, and is to continue in force during the world war and until the President proclaims the completion of demobilization. It purports to be designed to promote the use of grain as food, and prevent its use for brewing or distilling purposes. No penalties for the violation of the act are provided.

The eighteenth amendment to the Constitution of the United States becomes operative on January 16, 1920. It prohibits the manufacture, sale, transportation, export or import, of intoxicating liquors, but does not define what shall be deemed to be such liquors. Conflicting decisions have been rendered in the United States District Courts, as to whether beer containing not more than $2\frac{3}{4}$ per cent of alcohol is intoxicating. The Circuit Court of Appeals for the New York Circuit holds this to be a justiciable question of fact. Appeals have been taken which will present this point before the Supreme Court of the United States next month. The attorney-general claims that beer is intoxicating which contains more than $1\frac{1}{2}$ per cent of alcohol.

Rhode Island passed a bill last April declaring that beer containing not over 4 per cent of alcohol was not an intoxicating liquor.

The beer commonly used in Germany before the war contained 10 or 11 per cent of alcohol. The war cut it down to 3 per cent. The books of the New York Life Insurance Company, which for many years has done a large business there, show that for the 11 years before the war the total mortality among those whom it insured was 107 per cent of the company's standard mortality, calculated for all risks in all countries; whereas during the four years including the war the percentage was only 95 per cent. This shows that there was a much higher rate of mortality during the times of peace, and the friends of prohibition claim this as

evidence of the beneficial effects of restrictions on the diet and drink of the German people.

An Act of Congress, forbidding the importation into a "dry" state of intoxicating liquor, though only for the personal use of the importer, was held a valid regulation of interstate commerce in United States *vs.* Hall, 248 U. S., 420.

The civilized world will look with the greatest interest on our adoption of virtual prohibition, as to most people, of drinking intoxicants as a matter of constitutional policy. A great church has ventured on the experiment before; a great nation never.

New Zealand has a licensing system. In June, 1919, a popular vote was taken on substituting the rule of prohibition. This proposition was defeated by a majority of over 10,000. The soldiers' votes were decisive. Out of nearly 40,000 of these, less than 32,000 were for prohibition. The other voters numbered about 478,000, of whom prohibition was favored by 246,000.

Peru has passed a law forbidding sale or consumption of alcoholic drinks on Saturdays and Sundays; and also a law providing for anti-alcohol instruction in schools. It deprives habitual drunkards of citizenship.

One of the conspicuous agencies of the United States in winning the war was the National Research Council, which in many directions brought science to our aid. Its "Psychology Committee," co-operating with the "Division of Psychology of the Medical Department," in the office of the surgeon-general, the "Committee on Clarification of Personnel in the Army," and the "Psychological Section of the Medical Relief Board," set out to secure the use of the best material for each kind of military service among the enlisted men and, to a certain extent, among the officers. The right men were to be found for each particular class of functions, and found by the aid of close scientific tests. In the final outcome all commissioned officers, except general and field officers, were subjected to a psychological examination.

The results achieved, either wholly or in great part, were giving a rating to every soldier; special assignments of men securing a high rating; turning over for special modes of development men of low mentality; and eliminating those of hopeless inferiority.

The mentality of over 45,000 men was found to be no greater than that of a child of ten, and of these a tenth stood no higher in tests of intellect and character than an ordinary boy of seven.[11]

A million and three quarters were thus examined, including 41,000 commissioned officers.

On August 3, 1918, the Secretaries of the Army and the Navy issued regulations to suppress during the war all prostitution and aiding and abetting it in any way within 10 miles of any military or naval station. This was done under the authority of the Army Appropriation Act of July 9, 1918, which authorizes such measures to be made effective within a reasonable distance of such stations.

A former President of this Association has recently said, in a public address, that the government of the United States, hitherto believed to be a government of limited powers, has become, under the decisions of the Supreme Court, a government of unlimited power, at least in time of war.[12]

India as a Member of the British Empire.

Great Britain has pursued, during the past year, the policy initiated by Lord Morley of extending the official influence of Indians in India, but with the growing impression that his reforms have so worked out as to give them neither the best of the former system, nor the best of the new. A report by the Secretary of State for India and the Viceroy, presented to Parliament a few months since, indicates that the government is prepared to go further and create without delay, in the major provinces, ministries that are in some matters responsible to the people. The government of India, as a whole, will, as now, proceed from Parliament and remain wholly responsible to Parliament, but the Indian Legislative Council will be more representative and influential, and divided into two Houses, the Upper to be the final legislative authority on points deemed essential by the government. The erection of a Privy Council and a Council of Princes is also contemplated, two bodies which seem rather a concession to the natural craving in the East for glitter and show.

[11] Science, March 7, 1919, 226.

[12] Moorfield Storey, Address on *Obedience to Law*, at the opening of Petigrew College.

The report states that the conception of the eventual future of India entertained by the two great officers who unite in submitting it is that it should be made "a sisterhood of states, self-governing in all matters of purely provincial interest, and presided over by a central government, increasingly representative of, and responsible to, the people of all of them, dealing with matters, both internal and external, of common interest to the whole of India."

Water Terminals.

An important step has been taken by Congress towards extending federal aid to harbor improvements. It appears in the River and Harbor Act of March 2, 1919, and reads thus:

"It is hereby declared to be the policy of the Congress that water terminals are essential at all cities upon navigable waterways and that at least one terminal should exist, owned by the municipality or other public agency of the state and open to the use of all on equal terms."

Public Education.

The Act of Parliament passed in the summer of 1919, founded on the bill presented in 1917 by the Minister of Education, greatly extended the bounds of teaching in public schools, and essentially democratized the whole educational system of England.

The city of New York has made an appropriation of $50,000 for school lunches during 1919. Heretofore they were furnished by private charitable societies.

Several states have made provision for the Americanization of those of their inhabitants who do not speak and write English. One of the most drastic of these statutes was passed this year by South Dakota. It is designed to secure the compulsory education of any person between 16 and 21 years of age, who does not speak, read and write the English language. Evening schools are provided, which teach it. At these, persons of from 21 to 50 years of age may receive free instruction in English.

New York has enacted a similar law, which went into effect on September 1.

Initiative and Referendum.

In Maine, the Supreme Judicial Court, in August, 1919, gave its opinion to the Governor, that the legislature of that state having ratified the National Prohibition Amendment, it could not afterwards be submitted to a popular referendum. The case had been closed.

An initiative and referendum law passed by Manitoba has been held void by the Imperial Privy Council, on the ground that the Province has no power to make laws by the direct vote of the people, but only through its legislative assembly.

Forms of Judicial Proceedings.

Michigan, in 1919, passed a law authorizing suits to obtain a merely declaratory judgment, decree or order, and the court in such cases may make binding declarations of rights, whether any consequential relief is or could be claimed, or not; including the determination, at the instance of anyone claiming to be interested under a deed, will or other written instrument, of any question of construction arising under the instrument and a declaration of the rights of the parties interested.

The "Juries Act" of July 30, 1918, in England, greatly reduces the opportunities there for a trial by jury. It is not a matter of right, unless on issues of fraud, libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise of marriage. Nor does it obtain in petty cases involving a value of less than £5.[13]

Largely through the efforts of the American Bar Association, Congress enacted (February 26, 1919) a bill that judgment in appealed cases in the courts of the United States shall be given without regard to technical errors, or defects, or to exceptions which do not affect the substantial rights of the parties. This adopts a policy which was already established in a majority of the states, and supported by a strong and outspoken public sentiment.

A recent instance of the need of such legislation is given by the case of People *vs.* Goldberg, in Illinois.[14] The defendant was charged with 50 illegal sales of liquor, in 50 counts. In one count the name was written *Holdberg*. In the rest it was written

[13] Am. Bar Association Journal, V, 290.

[14] 122 Northeastern Rep., 530.

Goldberg. A general verdict was rendered against him, and a motion in arrest of judgment was denied. The Supreme Court, on appeal, found error and remanded the cause.

It will be recollected that for more than 20 years a convention has existed between most of the powers of Continental Europe regulating the modes of proceeding in courts of justice for the enforcement of rights of citizens of one of them against citizens of another. This convention, in its present form, was framed by an official conference of nations held at the Hague in 1894, for the advancement of international private law. It went into effect in 1895 and has been renewed from time to time with certain amendments, in periods of five years. The treaty of peace (Art. 287) between the Allied and Associated Powers and Germany, now pending for ratification, makes the rules of this convention as to civil procedure apply to suits, of the character mentioned, in the courts of any and all the signatory powers, except France, Portugal and Roumania.

This is an interesting illustration of the possibilities of enlarging the scope of existing international relations, by new adhesions to old conventions.[15]

At the Hague Convention of 1894, the United States was not represented, and until now it has never sought to adhere to it. The treaty of Paris brings it squarely in. A beneficial measure of European origination has therefore (or will have, if the treaty is ratified) been carried over to America, as well as to other continents.

There would seem to be no objection on principle to this exercise of the treaty power, and it would greatly promote commercial intercourse of Americans with foreign countries. If, to mention one instance, they have occasion to sue in a foreign court, no bond or deposit for the costs of suit will be required; but if the action fail, a judgment for costs will be given, which can be collected in the courts of the plaintiff's country.

[15] **Progress of Continental Law in the 19th century, Continental History Series, XI, 506.**

Forms of Legislative Proceedings.

The growing practice in the states of appointing special parliamentary draftsmen has now been followed by the United States.

By a recent act of Congress, technical aides in the matter of putting proposed legislation in proper form have been provided for each house.

Wisconsin is the first state in the world to authorize the use of automatic voting machines in legislative proceedings. They are operated by electricity, and have now been employed for two sessions, to general satisfaction.

There are push buttons on the desk of each member, connected with a bulletin board on which are the names of all. As compared with the process of oral voting, the new device saves 99 per cent of the time formerly taken by a roll call of yeas and nays. That time in the House of Representatives of the United States is about 45 minutes.

Forms of Commercial Transactions.

The provisions in the Pomerene Act of 1916 against frauds in altering spurious bills of lading, were sustained in June, by the Supreme Court, in United States *vs.* Ferger, as protecting an important instrumentality of foreign and interstate commerce.

A law has been enacted by Uruguay requiring the use of the metric system in all trade transactions.

Another step has been taken in Latin-America towards a break with ancient Latin-American practice in favor of methods early inherited from England by North America.

Brazil has passed a law authorizing contracts to be made without the intervention of a notary public. They can hereafter be executed by the parties before two witnesses and, when the signatures are acknowledged can be recorded on the public records. They may be typewritten or printed, but the parties must sign or "rubricate" each page.

Co-Operative Stores.

The governmental control of prices during the war has had one unexpected effect in England.

The co-operative stores in Great Britain have a membership of three or four millions. They can, of course, buy at the retail prices fixed by the government. By their co-operative rules their members have a dividend from any profits earned on all purchases which they may make. In other words, they have, in the end, a preference over all other purchasers, and to that extent may be said to pay in effect less than the general public for the articles officially priced.

Matters of Religion.

While the degrees of LL. D. and J. U. D. refer equally to the canon and the civil law, there have for some centuries been scant opportunities for the legal profession to study the former, on account of its bulk and want of scientific arrangement. Pope Pius X initiated its codification in 1904, and this was completed in 1917, under the auspices of Pope Benedict XV, when the result of the work was promulgated, the code to take effect May 19, 1918. An enormous mass of ecclesiastical jurisprudence has been thus reduced to a volume of about 450 pages.

By the Treaty of Berlin, in 1878, Roumania pledged herself to give citizenship and equal civil rights to her Jewish inhabitants.

On May 28, 1919, this pledge was finally fulfilled, by a royal decree.

In Mexico a presidential decree has greatly changed her laws as to marriage and divorce. Marriage is regarded by the state as a civil contract, not a church sacrament. The parties proposing it must present certificates from two or more licensed physicians that they are each of sound mind and body. Absolute divorces are allowed. Heretofore, following the canon law, they could only be from bed and board.[16]

Criminal Law.

Missouri has restored capital punishment. It is to be inflicted by hanging.

Texas has amended her Constitution so as to permit testimony by deposition against one on trial on a charge of crime.

[16] Am. Bar Association Journal, V, 245.

Vermont has adopted this year the system of conditional pardon by the Governor upon such conditions as he thinks proper. He has all the powers over the convict which he would have if he were surety in the case upon the recognizance of such convict before conviction, and shall be the sole judge as to whether the conditions of such pardon have been violated.

Elections and Voting.

The new English election laws allow nearly every citizen to become a candidate for member of Parliament, but only if he puts up a forfeit of £150. If he obtains as many as an eighth of all the votes cast, the money is returned to him, otherwise being turned into the public treasury.

An important point of constitutional construction was settled last winter by the Supreme Court of the United States, in Missouri Pacific Railway Co. *vs.* Kansas, 248 U. S., 276, 599. This decision supports the doctrine that two-thirds of the senators present can overrule a Presidential veto, although less than two-thirds of the senators elected.

Although in Canada, under the Dominion Constitution, a right was reserved to the Governor-General-in-Council to veto any provincial legislation, it has very rarely been used. The jealousy of the people in respect to executive power, has led to the same result there as in England. The general feeling has been that as the Crown has practically abandoned the veto, as to Acts of Parliament, the Governor-General, who is in principle a reflection of regal authority in and for the Dominion, should not resort to it to overthrow the legislative policy of a Province.

Under a recent decision of the Judicial Committee of the Privy Council it seems to be settled that a Provincial statute cannot be held void because it takes away vested property interests. We in the United States had to adopt the fourteenth amendment to the Constitution to prevent such legislation on the part of a state of the union. In Canada there is no such protection unless by the veto power of the Governor-General-in-Council. That she does have it by the exercise of that power is now determined by an Order-in-Council of May 30, 1918. Mr. Justice Riddell's well-known remark that the rule of the Decalogue "Thou shalt not steal" was not binding on the legislature of a Canadian prov-

ince, is no longer true in view of this decision; but it goes no farther than to provide a remedy for depreciation of property plainly amounting to virtual confiscation.

Switzerland has amended her Constitution so that elections to the National Council are made in the respective cantons or half cantons on the principle of proportionate representation, and regulated by federal legislation.[17]

Wurtemberg, in her new Constitution as a free state, has adopted the same principle for the elections to the legislative assembly.

Idaho has repealed so much of her direct primary law as applied to state officers and representatives in Congress. They will hereafter be nominated in the old way by party conventions.

In North Dakota a statute has been enacted to give all public advertising to one newspaper in each county. If there are several newspapers published there, one of them is to be elected by a popular vote.

Massachusetts has amended her Constitution so as to give her legislature authority to provide for compulsory voting at elections. This measure was adopted on a referendum by a majority of less than 6000, out of a total voting strength of 430,000.

This reversion to a policy adopted by several of the early American commonwealths, but long abandoned, indicates that a large portion of the people are dissatisfied with giving a vote to those who do not care to use it. The plan of compulsion has worked well for many years in several foreign countries. The other states will watch with strong interest its treatment by the General Court of Massachusetts.

[17] Am. Bar Association Journal, V, 307.

UNIVERSITY OF CALIFORNIA LIBRARY
Los Angeles
This book is DUE on the last date stamped below.

Form L9–30*m*-11,'58(8268s4)444

THE LIBRARY
UNIVERSITY OF CALIFORNIA
LOS ANGELES

K
50
A1B193g
Baldwin -
The growth of
law during the
past year

BINDERY 1960

K
50
.A1B193g

AA 000 628 653 8